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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,823	02/05/2004	Simon Mawson	2000U042D1-CON2	5967

7590 02/07/2005

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EXAMINER	
CHEUNG, WILLIAM K	
ART UNIT	**PAPER NUMBER**
1713	

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/772,823	MAWSON ET AL.	
	Examiner	Art Unit	
	William K Cheung	1713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 December 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-15 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Brady, III et al. (US 5,317,036) for

the reasons adequately set forth from paragraph 5 of non-final office action December 9, 2004.

Applicant's arguments filed December 9, 2004 have been fully considered but they are not persuasive. The examiner acknowledges that claim 1 has been amended to include a "WPR" feature. The "WPR" feature has been fully considered in the instant office action.

Applicants argue that Brady, III et al. are silent on a "bimodal polyolefin" of claim 1 and the examiner fails to provide a rationale for the applied inherency. Applicants also argue that the polymers of Brady, III et al. may not necessary be "bimodal". However, applicants fail to recognize that the examiner has clearly stated that "in view of substantially identical monomeric compositions and substantially similar catalyst system between the claimed invention and the disclosure of Brady, III et al., the examiner has a reasonable basis to believe that the density, molecular weight properties of the polymers, the sieved neat polymer fractions obtained from specific mesh sieve sizes having a specific I_2 values, WPR or bimodal polymers being claimed are inherently possessed by the disclosure to Brady, III et al." Although applicants argue that the catalyst of Brady, III et al. is a single metallocene while the applicants polymers are prepared with two or more catalysts, applicants fail to recognize that claim 1 does not recite a polymer prepared by two or more catalysts.

Applicants further argue that Brady, III et al. teach a unimodal polymer because Brady, III et al. is pertained to "a catalyst", "the catalyst", "reactor", and narrow molecular weight distribution. However, applicants must recognize that these argued features are not indication that the polymers produced in the process of Brady, III et al. are unimodal. Applicants must also recognize that even for a single catalyst system, during polymerization, a single catalyst can undergo unpredictable changes in chemical composition or in the morphology make up of the catalyst that would lead to unexpected modality in the final polyolefin product. In view of substantially identical monomeric compositions and substantially similar catalyst system between the claimed invention and the disclosure of Brady, III et al., the examiner has a reasonable basis to set forth a 102-3 rejection.

Regarding applicants' arguments that the claimed polymers are "unprocessed, untreated granular polymer" and that the "sieved neat polymer fractions obtained from 35, 60 and 120 mesh sieve have I_2 values that are within 40% of one another", applicants must recognize that every polymerization processes must go through a step of producing an "unprocessed, untreated granular polymer" having various particle or fluff sizes. In view of substantially identical monomeric compositions and substantially similar catalyst system between the claimed invention and the disclosure of Brady, III et al., it is reasonable for the examiner to believe that the "sieved neat polymer fractions obtained from 35, 60 and 120 mesh sieve have I_2 values that are within 40% of one another" is inherently possessed in Brady, III et al.

The examiner acknowledges applicants' comments that the phrase "unprocessd, untreated granular bimodal polyolefin" is not a process limitation, and that it is merely a description of the state of the claimed "polyolefin". The examiner agrees that the phrase is for descriptive purposes only. However, the said phrase is clearly indicating "a description" that the claimed polyolefin has not been "processed" or "treated".

In view of the reasons set forth above, the examiner has clearly set forth proper rationale for the inherency made. If Applicants argue the rationale set forth by the examiner is unacceptable, it is up to applicants to provide evidence that the polymer products of Brady, III et al. is indeed different from the process for preparing the claimed polymers. Since the PTO does not have proper means to conduct experiments, the burden of proof is now shifted to applicants to show otherwise. In re Best, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977); In re Fitzgerald, 205 USPQ 594 (CCPA 1980).

Conclusion

4. **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William K Cheung whose telephone number is (571) 272-1097. The examiner can normally be reached on Monday-Friday 9:00AM to 2:00PM; 4:00PM to 8:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David WU can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

William K. Cheung

Primary Patent Examiner

February 3, 2005

WILLIAM K. CHEUNG
PRIMARY EXAMINER